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Davis & Campbell L.L.C.

FILE NUMBER:

16127-006

March 5, 2012

VIA FEDERAL EXPRESS

Mr. Lester A. Heltzer Executive Secretary National Labor Relations Board 1099 14th Street, N.W. Washington, D.C. 20570

Re: NTN-Bower Corporation, Case 10-CA-38816

Dear Mr. Heltzer:

Enclosed for filing are an original and eight (8) copies of:

- 1. Respondent's Exceptions to the Decision of the Administrative Law Judge; and
- 2. Brief in Support of Respondent's Exceptions to the Decision of the Administrative Law Judge.

Each is accompanied by a certificate of service upon counsel of record.

Thank you for your assistance in this matter.

cc w/enc.:

James D. Riggs

David Schollhammer

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OBOER SECTION NERS

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

NTN-BOWER CORPORATION,)	
and)	Case 10-CA-38816
INTERNATIONAL UNION, UNITED)	
AUTOMOBILE, AEROSPACE, &)	
AGRICULTURAL IMPLEMENT)	
WORKERS OF AMERICA,)	
AFL-CIO CLC.)	

RESPONDENT'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

The Respondent, NTN-Bower Corporation, through its attorneys, Roy G. Davis, Keith J. Braskich, and Richard A. Russo of Davis & Campbell L.L.C., excepts to the decision of the Administrative Law Judge dated February 15, 2012 as follows:

- 1. To the finding and conclusion of the Administrative Law Judge that the General Counsel has met his burden of proving that the Respondent's unfair labor practices tainted the petition here. (Decision p. 10, Lines 20-23; Decision p. 11, lines 21-23)
- 2. To the finding and conclusion of the Administrative Law Judge that Respondent's unremedied refusal to furnish the Union with the names and addresses of permanent replacements severely impacted the Union's ability to

communicate with a substantial number of employees during the almost 2 ½ years since the strike ended. (Decision p. 10, Lines 29-32)

- 3. To the finding and conclusion of the Administrative Law Judge that the Respondent's unremedied unilateral changes affecting the Union's ability to post on company bulletin boards and to interact with employees in the plant, and the relocation of the Union's office from the shop floor to management offices, combined with the refusal to furnish names and addresses of unit employees, limited the Union's ability to contact permanent replacements and deprived the Union of the opportunity to meaningfully address any lingering feelings of disconnect that would naturally exist in the aftermath of a contentious and divisive strike. (Decision p. 10, lines 33-39)
- 4. To the finding and conclusion of the Administrative Law Judge that the Union's inability to communicate with replacements effectively prevented it from establishing a relationship with those employees in an effort to demonstrate what it could do as their collective bargaining representative. (Decision p. 10, Lines 41-43)
- 5. To the finding and conclusion of the Administrative Law Judge that the Respondent interjected itself between the Union and the employees it was supposed to represent. (Decision p. 10, lines 43-45)

- 6. To the finding and conclusion of the Administrative Law Judge that the unfair labor practices found in 356 NLRB No. 141 (April 20, 2011) have a natural tendency to cause employee disaffection and loss of support for the Union.

 (Decision p. 10, lines 43-45)
- 7. To the finding and conclusion of the Administrative Law Judge that the Respondent's unremedied failure to reinstate all strikers who were entitled to reinstatement at the end of the strike would have a lingering and detrimental effect on unit employees by demonstrating the Respondent's power to adversely affect employees who exercise their statutory right to support the Union by participating in a strike. (Decision p. 11, lines 2-8)
- 8. To the finding and conclusion of the Administrative Law Judge that when considered individually and together, these unfair labor practices satisfy the first three factors considered by the Board (timing, nature of violations and tendency to cause employee disaffection). (Decision p. 11, lines 7-9)
- 9. To the finding and conclusion of the Administrative Law Judge that the evidence in this case also satisfies the fourth factor, i.e. the effect of the unlawful conduct on employees' morale, organizational activities, and membership in the union. (Decision p. 11, lines 11-12)
 - 10. To the finding and conclusion of the Administrative Law Judge that the

testimony of Ivan Caudle, the Union recording secretary, established the decline in membership and attendance at union meetings since the strike. (Decision p. 11, lines 12-14)

- 11. To the finding and conclusion of the Administrative Law Judge that Caudle's testimony regarding the difficulty of finding employees to serve as stewards in the plant, the impact of the relocation of the Union office, and other measures affecting access to employees demonstrated the negative impact of the unremedied unfair labor practices on the Union's organizational activities.

 (Decision p. 11, lines 14-19)
- 12. To the finding and conclusion of the Administrative Law Judge that the testimony of those employees called by the Respondent supported Caudle's testimony. (Decision p. 11, lines 19-21)
- 13. To the finding and conclusion of the Administrative Law Judge that the testimony and evidence adduced by the General Counsel satisfied all four factors considered in determining the existence of a causal relationship between the unfair labor practices and the loss of support. (Decision p. 11, lines 21-23)
- 14. To the finding and conclusion of the Administrative Law Judge characterizing the relationship between the Union and the bargaining unit employees following the strike as "lingering bad feelings". (Decision p. 11. lines

- 15. To the finding and conclusion of the Administrative Law Judge that the Respondent's conduct related to the unfair labor practices found in 356 NLRB No. 141 (April 20, 2011) deprived bargaining unit employees of an atmosphere where they could meaningfully and freely consider whether they desired to continue to be represented by the Union. (Decision p. 11, line 34-46 and p. 12, line 1-4)
- 16. To the finding and conclusion of the Administrative Law Judge that the testimony of the signers of the disaffection petition regarding their motives for signing it was irrelevant to a consideration of whether unremedied unfair labor practices caused a loss of majority support for the Union. (Decision p. 12, lines 6-16)
- 17. To the finding and conclusion of the Administrative Law Judge that even if he were to consider the testimony of the signers of the disaffection petition he would reach the same conclusion (that the unfair labor practices tainted the petition) because the testimony of the signers was consistent with the finding that the disaffection was causally related to the employer's unlawful conduct. (Decision p. 12, lines 9-13)
- 18. To the finding and conclusion of the Administrative Law Judge that the General Counsel does not have to prove a causal relationship between unremedied

unfair labor practices and employee disaffection for the Union. (Decision p. 12, line 13-16)

- 19. To the finding of the Administrative Law Judge that the Respondent's unremedied unfair labor practices found by the Board at 356 NLRB No. 141 had a reasonable and natural tendency to cause employee disaffection and that the petition purporting to show the actual loss of majority support for the Union was tainted by these unfair labor practices. (Decision p. 12, line 18-21)
- 20. To the conclusion of the Administrative Law Judge that the Respondent's December 31, 2010 withdrawal of recognition from the Union violated Sections (8)(a)(1) and (5) of the Act as alleged in the Complaint.

 (Decision p. 12, line 21-23)
- 21. To the finding and conclusion of the Administrative Law Judge that the Respondent's denial of access to the Union for purposes of conducting contractually required safety inspections and tours was unlawful. (Decision p. 12, line 36-38)
- 22. To the finding of the Administrative Law Judge that the Respondent's conduct on and after January 27, 2011 violated Section 8(a)(1) and (5) of the Act as alleged in the Complaint. (Decision p. 12, line 40-42)
 - 23. To the conclusion of the Administrative Law Judge that by withdrawing

recognition from the Union on December 27, 2010, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act. (Decision p. 12, line 46, p. 13, line 1-2)

- 24. To the conclusion of the Administrative Law Judge that by denying the Union access to its facility for the purpose of representing unit employees since January 27, 2011, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6)and (7) of the Act. (Decision p. 13, line 4-7)
- 25. To the remedy and order of the Administrative Law Judge. (Decision p. 13-15)
- 26. To the finding of the Administrative Law Judge that the Respondent manufactures ball bearings at its Hamilton plant. (Decision p. 2, line 38)
- 27. To the decision of the Administrative Law Judge to reject the Respondent's proof that the Union, subsequent to the strike, continually sought the discriminatory application of plant rules, including the attendance policy, to procure the wrongful discharge of the permanent replacements. (Decision p. 7, footnote 7; Transcript p. 189, 200 and 295; Respondent's Exhibits 16-29)
 - 28. To the decision of the Administrative Law Judge to reject the

Respondent's tender of the testimony of the remaining signers of the disaffection petition, in addition to the twelve he permitted to testify, that their reason for signing was the conduct of the Union toward them during the strike which caused them to sign the petition. (Decision p. 7, line 20-23; Transcript p. 295)

- 29. To the Administrative Law Judge's departure from and refusal to apply existing Board precedent which holds that evidence of employee disaffection arising prior to, and independently of, a respondent's unfair labor practice conduct is relevant to the determination of whether that conduct caused the employee disaffection for the union. (Decision p. 12, line 6-16)
- 30. To the finding of the Administrative Law Judge that Ivan Caudle testified that up until the withdrawal of representation the Respondent continued to deny the Union access to the bulletin boards in the plant and restricted non-working union representatives access to the plant. (Decision p. 5, line 19-35)
- 31. To the finding of the Administrative Law Judge that the decline in Union attendance at meetings is evidence of the effect of the Respondent's conduct on employee morale, organizational activities, and membership in the Union. (Decision p. 11, line 11-14)

NTN-Bower Corporation

Richard A. Russo

Its Attorneys

March 5, 2012

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Certificate of Service

Counsel of record for the Respondent certifies that he caused a true and correct copy of the foregoing Respondent's Exceptions to the Decision of the Administrative Law Judge to be served upon counsel of record by delivering the same on March 5, 2012 to Federal Express at Peoria, Illinois for overnight delivery in envelopes addressed as follows:

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